

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPOINTING STEVE PANGELINAN AS INTERIM CHIEF OF POLICE AND APPROVING EMPLOYMENT AGREEMENT

WHEREAS, Government Code Section 21221(h) permits the City Council to appoint a CalPERS retiree to a vacant position requiring specialized skills during recruitment for a permanent appointment, and provides that such appointment will not subject the retired person to reinstatement from retirement or loss of benefits so long as it is a single appointment that does not exceed 960 hours in a fiscal year; and

WHEREAS, the position of Chief of Police became vacant on December 30, 2016; and

WHEREAS, to ensure the efficient continued operation of the City's police department, the City Council desires to retain the services of Steve Pangelinan, a retired member of CalPERS, to serve as Interim Chief of Police, effective January 18, 2017; and

WHEREAS, Steve Pangelinan has over 30 years of experience in law enforcement with an extensive history in police management, including having previously served as Chief of Police with the City; and

WHEREAS, although Government Code Section 7522.56(f) requires that post-retirement employment commence no earlier than 180 days after the retirement date, Government Code Section 7522.56(f)(4) provides for an exception that allows for immediate employment of retirees in public safety positions; and

WHEREAS, Government Code Section 7522.56 provides that this exception to the 180-day wait period does not apply if a retiree accepts any retirement-related incentive; and

WHEREAS, the City Council, the City and Steve Pangelinan certify that he has not and will not receive a Golden Handshake or any other retirement-related incentive; and

WHEREAS, an appointment under Government Code Section 21221(h) requires an active, publicly-posted recruitment for a permanent replacement; and

WHEREAS, the current status of this recruitment is in the initial planning phases with an external recruitment firm; and

WHEREAS, the City desires to appoint Steve Pangelinan as interim Chief of Police, pursuant to the authority provided under Government Code Section 21221(h), to provide the leadership, managerial and organization skills necessary to manage the City's Police Department effectively and efficiently; and

WHEREAS, it is understood by the City and Steve Pangelinan that the combined total hours to be served by Steve Pangelinan in any fiscal year, for all CalPERS employers combined, shall not exceed the 960-hour limitation set forth in California Government Code Section 21221(h) and Section 7522.56(d); and

WHEREAS, this Government Code Section 21221(h) appointment shall only be made once and therefore will end December 31, 2017 or, if earlier, the date that this appointment is terminated by the City or Steve Pangelinan.

WHEREAS, the City Council has reviewed a proposed employment agreement by and between Steve Pangelinan and the City.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Milpitas, California, as follows:

Section 1. All facts set forth in the background section of this Resolution are true and correct.

Section 2. Steve Pangelinan has the specialized skills needed to perform the work required of the interim Chief of Police until a permanent Chief of Police is appointed and thereafter begins his or her service.

Section 3. The City Council hereby appoints Steve Pangelinan as interim Chief of Police effective January __, 2017 pursuant to the authority provided under Government Code Section 21221(h) and 7522.56, during the recruitment, selection and employment of the permanent Chief of Police, to provide the critically-needed, specialized skills necessary to manage the City's Police Department.

Section 4. The employment agreement with Steve Pangelinan, a copy of which is on file with the City Clerk, is approved by the City Council, effective January 18, 2017.

Section 5. The City Manager is authorized to execute said agreement on behalf of the City, with such technical amendments as may be deemed appropriate by the City Manager and City Attorney.

PASSED AND ADOPTED this _____ day of _____ 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

AGREEMENT FOR TEMPORARY EMPLOYMENT

THIS AGREEMENT is between the CITY OF MILPITAS, State of California, a municipal corporation ("City"), and Steve Pangelinan, an individual ("Employee") (collectively, the "Parties") and is effective at 12:00 a.m. on January 18, 2017.

Recitals

WHEREAS, the City has a vacancy at the position of Chief of Police, a regular position for which the City is conducting a recruitment for a permanent appointment; and

WHEREAS, the City has an immediate need for an employee to temporarily perform the position of Chief of Police, a position involving specialized skills and training and which is critically necessary to the on-going duties and functions of the City's Police Department;

WHEREAS, Employee is competent and qualified to perform the services required by this Agreement, and City wishes to have Employee perform the Chief of Police duties on an interim basis; and

WHEREAS, Employee's employment is authorized by Government Code section 21221(h), which permits the City to appoint a CalPERS retired annuitant to a vacant position requiring specialized skills during recruitment for a permanent replacement.

NOW, THEREFORE, the parties do mutually agree as follows:

Agreement

1. **Appointment and Scope of Services:** Pursuant to this Agreement, Employee is appointed as interim Chief of Police, and shall temporarily perform the functions of this position, which is a position involving highly-specialized and critically-needed skills set forth in the attached job description, in the Milpitas Municipal Code and as provided by law. Such employment is "at will," subject to the terms of this Agreement, and Employee shall perform said duties at the pleasure of and under the direct supervision of the City Manager.

2. **Compensation and Work Schedule:**

Rate of Pay: Employee shall be paid at the rate of \$115.38 per hour. The City has confirmed that this rate is not less than the minimum, nor in excess of the maximum, paid by the City to other employees performing comparable duties (divided by 173.333 to equal an hourly rate) as listed on the City's publicly-available pay schedule and publicly-available employment agreements. Payments will be made on regularly scheduled City payroll dates, and shall be subject to all applicable payroll taxes and withholdings. Such compensation shall be the sole compensation for Employee's services under this Agreement.

Work Schedule and 960-hour Limitation: Employee is expected to devote necessary time, within and outside normal business hours, to the business of the City. Pursuant to

Government Code section 21221(h) and section 7522.56(d), however, Employee is allowed to work a maximum of 960 hours per fiscal year for all public employers that contract with CalPERS for retirement benefits. The City retains the right to designate, reduce, change, or amend the number of hours assigned to Employee consistent with the City's workload and other needs. If Employee's annual hours are approaching 960, then the City retains the right to summarily suspend Employee's duties under this Agreement and to reassign any scheduled hours, as needed, to ensure that Employee does not exceed the maximum hours allowed by this Agreement. Employee will be responsible for keeping track of the number of hours worked on a time sheet form provided by the City and submitting them at least every two weeks.

The position is a temporary, hourly assignment which is generally not expected to exceed 40 hours per week. The City, through the City Manager, will assign Employee hours to work. Due to the nature of the position, it is understood that the work day and work week hours may vary, however Employee shall not work overtime (i.e. in excess of 40 hours per week) without express permission from the City Manager.

3. Employment Status:

A. Benefits: Other than the compensation described above in Section 2, Employee will receive no other benefits, incentives, compensation in lieu of benefits, or any other form of compensation. Employee understands and agrees that he is not, and will not be, eligible to receive any benefits from the City, including any City group plan for hospital, surgical, or medical insurance, any City retirement program, or any paid holidays, vacation, sick leave, or other leave, with or without pay, or any other job benefits available to an employee in the regular service of the City, except for Worker's Compensation Insurance coverage or similar benefits required by law.

B. No Membership in Bargaining Unit: Employee understands that he is not a member of any bargaining unit and is not covered by the terms of any Memorandum of Understanding with any represented or unrepresented group of City employees.

C. No Property Right in Employment: Employee understands and agrees that the terms of his employment are governed only by this Agreement and that no right of regular employment for any specific term is created by this Agreement. Employee further understands that he acquires no property interest in his employment by virtue of this agreement, that the employment is "at will" as defined by the laws of the State of California (meaning that he can be terminated at any time for any reason or for no reason), and that he is not entitled to any pre- or post-deprivation administrative hearing or other due process upon termination or any disciplinary action except as otherwise provided by law.

D. Employment of a Retiree: Employee understands that CalPERS retired annuitants may be employed by a CalPERS public agency employer, by temporary appointment to a position not to exceed 960 hours in any fiscal year for all such employers; either (1) during an emergency to prevent stoppage of public business or (2) because the retired employee has skills needed in performing the work of limited duration. In the event Employee is providing service to any other CalPERS public agency employer during the

term of this Agreement, Employee must notify the City of such employment and disclose on a periodic basis (at a frequency determined by the City) the number of hours Employee is performing for that other public agency to ensure that the maximum number of hours is not exceeded.

4. Representation of Employee: Employee represents that he is properly trained and certified to perform the duties required of the position and this Agreement.
5. Effective Date and Term of Agreement: This Agreement shall be effective on January ____, 2017 ("Effective Date"), and unless terminated earlier, shall terminate automatically at midnight on December 31, 2017. Employment is temporary, at-will and may be terminated with or without cause and with or without notice at any time by the Employee or the City. Employee is not eligible for any severance payment or benefit relating to or arising out of the termination of this Agreement.
6. Non-Assignment of Agreement: This Agreement is intended to secure the individual services of the Employee and is not assignable or transferable by employee to any third party.
7. Governing Law/Venue: This Agreement shall be interpreted according to the laws of the State of California. Venue for any action or proceeding regarding this contract shall be in Contra Costa County.
8. Enforceability: If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
9. Conflict of Interest: Employee agrees that during the term of this Agreement, he will not maintain any financial interest or engage in any other contract employment, occupation, work, endeavor or association, whether compensated or not, that would in any way conflict with, or impair Employee's ability to perform the duties described in this Agreement. Any work performed for the City outside the terms of this Agreement must be approved in advance in writing by the City Manager. Employee agrees to disclose whether he is performing work for any other CalPERS public agency employer as required by section 3.D. of this Agreement.
10. Entire Agreement and Modification: This Agreement constitutes the entire understanding of the parties hereto. This Agreement supersedes any previous contracts, agreements, negotiations or understandings, whether written or oral, between the parties. Employee shall be entitled to no other compensation or benefits than those specified herein, and Employee acknowledges that no representation, inducements or promises not contained in this Agreement have been made to Employee to induce Employee to enter into this Agreement.

No changes, amendments, or alterations hereto shall be effective unless in writing and signed by both parties. Employee understands that no oral modification of this Agreement made by any officer, agent, or employee of the City is effective. Employee

specifically acknowledges that in entering into and executing this Agreement, he relies solely upon the provisions contained herein and no others.

11. Support Services and Equipment: Employee shall be provided office space and the equipment needed to perform his duties and sufficient to fulfill obligations under this Agreement, as determined by the City Manager, at no cost to employee. Such equipment shall include a City-owned duty weapon, City police-equipped vehicle and City smartphone. In accordance with Government Code Section 21221(h), personal use of such equipment is not permitted.
12. Reimbursement for Expenses: Employee shall be reimbursed by City in accordance with standard City travel policy (as well as federal and state law) for all authorized and necessary travel undertaken by Employee in performance of services pursuant to this Agreement. Employee shall document and claim said reimbursement for such travel in the manner and forms required by the City. Other than as specifically provided herein, Employee shall receive no other compensation or reimbursements for expenses incurred by him in performance of this Agreement.
13. Notices: All notices permitted or required under this Agreement shall be given to the respective parties by hand-delivery or by mail at the following address, or at such other address as the respective parties may provide in writing for this purpose, by deposit in the U.S. Mail, postage pre-paid, addressed as follows:

CITY: City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035
Attn: City Manager

EMPLOYEE: Steve Pangelinan

14. Indemnification: In accordance with and subject to the limitations of the California Government Claims Act and California Labor Code, the City shall defend, save harmless and indemnify Employee against any tort, professional liability, claim or demand or other legal action, arising out of an alleged act or omission occurring in the performance of Employee's services as Chief Police, except that this provision shall not apply with respect to any intentional tort or crime committed by Employee, or any actions outside the course and scope of his employment as Chief of Police.
15. No Presumption of Drafter: The Parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the Parties, and this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any Party to be the drafter of this Agreement and, therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.
16. Assistance of Counsel: Each party to this Agreement warrants to the other party that the party has either had the assistance of counsel in negotiation for, and preparation of, this

Agreement or could have had such assistance and voluntarily declined to obtain such assistance.

Dated: _____

EMPLOYEE:

STEVE PANGELINAN

Dated: _____

CITY:

THOMAS C. WILLIAMS, CITY MANAGER